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Human rights situation in Palestine and other occupied Arab territories

Joint written statement* submitted by the BADIL Resource Center for Palestinian Residency and Refugee Rights, a non-governmental organization in special consultative status, Mouvement contre le racisme et pour l'amitié entre les peuples, a non-governmental organization on the roster

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[26 May 2014]

* This written statement is issued, unedited, in the language(s) received from the submitting non-governmental organization(s).

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The particular responsibility of private companies in territories under foreign occupation: the case of the Occupied Territory of Palestine (OPT)

When a territory is non self-governed or is under military occupation, besides the well known and recognized States responsibilities and obligations under international law and international humanitarian law, the role and responsibility of private companies must also be considered and duly evaluated in light of the human rights abuses of the people living under occupation. This becomes even more important when private companies may be considered as accomplices to war crimes and crimes against humanity.

The Russell Tribunal on Palestine[1] at its second session (London, 20-22 November 2010) examined International corporate complicity in Israel's Violations of International Human Rights Law, International Humanitarian Law, and War Crimes.

In its concluding remarks[2], the Russell Tribunal on Palestine noted, *inter alia*, that:

- Although customary international law and international treaties are silent on whether corporations have direct legal obligations under international law, corporations can infringe on the rights recognized in international human rights and humanitarian law instruments. Furthermore, the initiatives of the international community, voluntary codes of conduct, and in some cases, domestic legal systems use these standards to hold corporations to account for their conduct. Thus, corporations do have real and substantive obligations that may be enforced through international initiatives and/or domestic legal systems.

- … a number of corporations provide a range of services that assist in the construction and maintenance of illegal Israeli settlements in the OPT. According to evidence heard by the Tribunal, 1400 Israeli corporations are very active in settlements, and there are three large industrial zones, with approximately twelve large Israeli corporations whose activities require particular attention. The database of „Who Profits from the Occupation includes documentation that reveals 400 corporations, Israeli and non-Israeli, supporting the illegal settlements.

- These corporations are intimately involved with settlements, either by engaging in economic relations with them … by supplying them with the means to violate Palestinian human rights. Indeed, without this, settlements would not exist as urban communities connected to the outside world.

- In view of the criminal nature of the Israeli settlements and/or the criminal offences committed to enable settlements to be built and maintained, the economic relations that some corporations entertain with the settlements may be viewed as participation in their maintenance. Depending on the form that the relations assume, and depending on the domestic criminal law of a given jurisdiction, participation in a crime, including the criminal liability in some jurisdictions may be characterised as complicity, handing and/or receiving stolen goods, or laundering.

- The establishment of Israeli settlements in the occupied territories constitutes a war crime. Additional Protocol I characterises "the transfer by the occupying Power of parts of its own civilian population into the territory it occupies" as a "war crime" (Art. 85, § 4 (a); see also ICC Statute, Art. 8, § 2 (b) (viii); draft Code of Crimes against the Peace and Security of Mankind, Art. 20 (c) (i)). This characterisation is not altered by Israel's non-ratification of the Additional Protocol I and the Rome Statute of the ICC, but affects the possibility of individual criminal liability being applied against Israeli nationals for those specific offences. However, as settlements almost always involve the extensive appropriation of property not justified by military necessity, criminalised in article 147 of the IVth Geneva Convention, which Israel has ratified, the primary acts of Israelis in building and living in illegal settlements can lead to their individual criminal liability and such liability can be attached to all those who aid and abet Israelis in building and living in those settlements.

[1] http://www.russelltribunalonpalestine.com/en/

[2] http://www.russelltribunalonpalestine.com/en/sessions/london--session

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- A corporation's relations with a settlement are a type of conduct that "abets or [...] assists" (ICC Statute, Art. 25, § 3 (c) *supra* § 22) the settlement's continued existence. The fact that such participation occurs after the act initiating the crime does not preclude its designation as "complicity" since the settlements constitutes a *continuing* offence.

- The location of the Israeli settlements is not in doubt and corporations therefore cannot be unaware that their activities are assisting in Israel's crime.

- This applies to activities such as the construction of buildings (AFIGROUP), the manufacture, sale and export of cosmetics (AHAVA – Dead Sea Laboratories Ltd. and Shamrock Holdings of California), the running of service stations and businesses (Alon Group), bank funding of the settlements (Dexia), granting of bank loans for the purchase of settlement property (Leumi and Hapoalim banks), and the construction and running of a tramline in East Jerusalem (Alstom and Veolia Transport).

- There is a precedent for the conclusion that such activities may constitute complicity in the crimes in question, namely the UNGA characterisation of the activities of foreign interests in South Africa in the late 1960s, activities that were then deemed to encourage apartheid.

- ... as the economic activities undertaken by corporations in the israeli settlements contribute to the perpetuation of the settlements, they constitute complicity in a war crime.

- Deliveries of certain types of equipment such as the Caterpillar D9 bulldozers used to demolish houses or to damage land belonging to Palestinians, and to construct Israeli buildings, constitute complicity in war crimes involving not only the creation and maintenance of settlements but also the destruction or arbitrary and large-scale appropriation of property without military justification (see Nuremberg IMT Statute, Art. 6, b and IV[th] Geneva Convention, Art. 147).

- The International Court of Justice, in its consideration of the legality of the Wall[3], held that Israel "has the obligation to make reparation for the damage caused to all the natural and legal persons concerned." The State of Israel has an obligation to make reparations to Palestinian corporations adversely affected by the establishment of the Wall; this may be as a result of Israel's conduct and any assistance it has received from corporations.

- The violations of IHL committed by Israel during the assault in the Gaza incursion, in the establishment of maintenance of the illegal Israeli settlement, and in the construction of the illegal Wall constitute war crimes and/or crimes against humanity. These crimes have been committed with weapons, materials, equipment and services supplied by corporations such as Elbit Systems, Caterpillar and Cement Roadstone Holdings. These corporations have therefore assisted Israel in the commission of war crimes and may be liable for complicity in these crimes and violations of international law.

- Criminal responsibility under international law for accomplice liability includes various forms of support provided by individuals (including corporate actors), such as the provision of arms and associated material, communication equipment, and other supplies which all go towards facilitating the commission of international crimes

[3] International Court of Justice, *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory* (2004)

Recommendation

In the context of the longstanding occupation of the Palestinian Territory and considering the widespread, grave and continuous violations of human rights perpetrated by the State of Israel, amounting to war crimes and crimes against humanity, the international community cannot ignore the role the private companies play in such a situation.

We call upon the Human Rights Council to consider seriously the role and responsibilities of private companies in human rights violations, war crimes and crimes against humanity related to the occupation of the Palestinian territory by the State of Israel.